

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

United States of America)	
v.)	
ANTOINE TAVARES SMITH)	Case No: <u>3:03CR110-01</u>
Date of Previous Judgment: <u>June 16, 2004</u>)	USM No: <u>17865-058</u>
(Use Date of Last Amended Judgment if Applicable))	<u>Stanford Clontz</u>
)	Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months **is reduced to** _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: <u>34</u>	Amended Offense Level: <u>34</u>
Criminal History Category: <u>VI</u>	Criminal History Category: <u>VI</u>
Previous Guideline Range: <u>Life</u> to <u>Life</u> months	Amended Guideline Range: <u>Life</u> to <u>Life</u> months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ Other (explain): The application of Amendment 706 results in no change to the Base or Total Offense Levels or the advisory guideline range since the defendant is a "career offender" under USSG §4B1.1. Furthermore, no reduction is authorized because Defendant's original sentence was "based on" a departure from the mandatory minimum sentence of Life and not on a sentencing range lowered by Amendment 706. See United States v. Hood, 556 F.3d 226 (4th Cir. 2009).

III. ADDITIONAL COMMENTS

Except as provided above, all provisions of the judgment dated June 16, 2004 shall remain in effect.

IT IS SO ORDERED.

Order Date: April 16, 2009

Effective Date: _____
(if different from order date)


Frank D. Whitney
United States District Judge

